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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
HANCE, ROBERT J	

ART UNIT	PAPER NUMBER
2421	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/569,174	LEURS ET AL.	
	Examiner	Art Unit	
	ROBERT HANCE	2421	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *26 March 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 03/26/2009 have been fully considered but they are not persuasive.

Applicant notes on page 5 of the Remarks that claim 1 has been amended to overcome the 35 U.S.C 101 rejection previously applied to claims 1-7. However, Examiner finds that claims 1-7 as amended still fail to meet the requirements of 35 U.S.C 101. Specifically, the claims are still not tied to another statutory category (such as an apparatus), nor do they transform underlying subject matter. The claims can be interpreted as being performed entirely manually and therefore do not meet the requirements of 35 U.S.C. 101.

Applicant argues on page 6 of the Remarks that in the disclosure of Agnihotri, "there is no teaching or suggestion of personalizing of how the programs are to be rendered." Examiner respectfully disagrees. As disclosed by Agnihotri, mass-market content (broadcast programming) is received, and its rendering (i.e. which programs are displayed) is personalized during playout of the content under the control of the user profile (see Agnihotri paragraphs 17-19, 21 and 25). Therefore in Agnihotri there is teaching of "personalizing of how the programs are to be rendered."

Applicant argues on page 7 of the Remarks that "a person skilled in the art would not look to Hoffberg to remedy the deficiencies of Agnihotri." Examiner respectfully disagrees. Agnihotri teaches acquiring biometric information from a user through the use of a sensor, where the biometric information is used to personalize the rendering of

programming content. Agnihotri only fails to disclose that the biometric information is obtained by a sensor that is "coupled" to the user. Hoffberg teaches acquiring biometrics using a sensor that is coupled to a user, and that the biometrics are used in a dynamic user preference profile. Examiner respectfully asserts that one skilled in the art would have found it obvious to combine the teachings of Agnihotri and Hoffberg to arrive at the claimed invention.

Applicant amended subject matter into claims 1, 8 and 11 which is similar to subject matter found in claim 6. Applicant argues on page 8 of the Remarks that a skilled artisan would not look to Kowald to remedy the deficiencies of Agnihotri with respect to claims 6 and 10. Examiner respectfully disagrees. Agnihotri discloses data indicative of a mood-affecting aspect of the content, and matching the data against the user profile for the control of the processing (see Agnihotri Fig. 3B; [0027] – program guide data contains genre information, which is a mood-affecting attribute of the content). What Agnihotri fails to explicitly disclose is that the data is meta-data which is provided with the program content. Kowald discloses meta-data associated with video data that tags the content with an mood-affecting attribute indication (see Kowald [0045]). It follows that one skilled in the art would have found it obvious to modify the system of Agnihotri with the teachings of Kowald.

Applicant requests on page 8 of the Remarks that Examiner provide the basis for, and an explanation of, the official notice applied to claim 7. However, due to Applicant's failure to traverse the official notice taken in the rejection of claim 7 in the Office Action mailed 04/17/2008, the well-known in the art statement applied thereto

was taken to be admitted prior art as of Applicant's response mailed 07/16/2008. See MPEP 2144.03.

Claim Rejections - 35 USC § 101

Claims 1-7 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-5, 8-9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Agnihotri et al., US Pub No 2002/0178440.

As to claim 1 Agnihotri et al. disclose a method of enabling to render mass-market content information to a user, the method comprising enabling to use a profile of the user for control of processing the content information for the purpose of personalizing the rendering during play-out of the content information (Paragraphs 17-19, 21, 25; Fig. 3A-3C – profiles and biometric data are used to generate recommendations, thus the content is personalized for the particular user).

As to claim 2 Agnihotri et al. disclose the method of claim 1 wherein the profile comprises a dynamic part with biometric information about the user (Paragraph 17-19 – as per applicant's disclosure, paragraph 5, visual cues are considered biometric information).

As to claim 4 Agnihotri et al. disclose the method of claim 1, wherein the profile comprises information about a current activity of the user (Paragraph 18; Fig. 4).

As to claim 5 Agnihotri et al. disclose the method of claim 1, wherein the profile comprises a static part based on: history of the user, declared interest, a declared preference (Fig. 3A-3B; Paragraphs 25-28).

As to claim 8 Agnihotri et al. disclose a consumer electronics system for rendering mass-market content information to a user, the system comprising: a memory for storing a user profile (Fig. 1:110; Paragraph 25; claim 16); and a controller coupled to the memory for controlling a processing of the content for the purpose of

personalizing the rendering during play-out of the content, under control of the profile (claim 16; Paragraphs 17-21; Paragraph 30-32; Fig. 4).

As to claim 9 Agnihotri et al. disclose the system of claim 8, further comprising: a sensor for sensing a current biometric attribute of a user (Fig. 1: 150-1 – 150-N capture visual and auditory signals; Paragraph 18. As per applicant's disclosure, paragraph 5, visual cues are considered biometric information); an interpreter coupled to the sensor and the memory for interpreting an output signal from the sensor within the context of the profile (Paragraphs 20-22; Fig. 1: see processor 120, viewer profiles 300).

As to claim 11 see similar rejection of claim 1. The control software of claim 11 corresponds to the method of claim 1. Therefore, claim 11 has been analyzed and rejected.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440 in view of Hoffberg et al., US Patent No 5,875,108.

As to claim 3 Agnihotri et al. disclose the method of claim 2, comprising acquiring the biometric information via a sensor (Paragraphs 17-18; Fig. 1: 150-1 – 150-N).

Agnihotri et al. fail to disclose that the sensor is coupled to the user. However, in an analogous art, Hoffberg et al. disclose adjusting user preferences by measuring certain biometric values, such as heart rate, blood pressure, etc (col. 34 lines 34-50). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the biometric measuring system disclosed by Hoffberg et al. in the system of Agnihotri et al. The rationale for this combination would have been to take into account factors other than visual and auditory signals. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

5. Claims 6 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440 in view of Kowald, US Pub No 2003/0002715.

As to claim 6 Agnihotri et al. fail to disclose providing metadata indicative of a mood affecting aspect of the content; and enabling to match the metadata against the profile for the control of the processing. However, in an analogous art, Kowald discloses providing metadata indicative of a mood affecting aspect of the content

(Paragraph 45). It would have been obvious to one of ordinary skill in the art at the time of the invention to use the metadata as disclosed by Kowald in the system of Agnihotri et al. and to match the metadata against the profile for the control of the processing. The rationale for this combination would have been to decide if a scene is suited to a viewer who is in a particular emotional state. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention.

As to claim 10 see similar rejection of claim 6. The system of claim 10 corresponds to the method of claim 6. Therefore, claim 10 has been analyzed and rejected.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Agnihotri et al., US Pub No 2002/0178440.

As to claim 7 Examiner takes official notice of the fact that storing content for personalized rendering later on was well known in the art at the time of the invention.

Conclusion

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT HANCE whose telephone number is (571)270-5319. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John W. Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/John W. Miller/ ROBERT HANCE

Supervisory Patent Examiner, Art Unit 2421

Examiner
Art Unit 2421

/ROBERT HANCE/
Examiner, Art Unit 2421